

CUMULATIVE DIGEST

CH. 14 DEATH PENALTY

§14-1 Death Penalty Statute

- [\(a\) Generally](#)
- (b) Applicability (**not used**)
- (c) Mental Retardation (**not used**)
- (d) Double Jeopardy (**not used**)

§14-2 Indictment for capital offense (**not used**)

- (a) Statutory provisions (**not used**)
- (b) Constitutional provisions (**not used**)

§14-3 Statutory aggravating factors

- (a) Generally (**not used**)
- (b) Illinois statute
 - (1) Police officer (**not used**)
 - (2) DOC employee (**not used**)
 - (3) Multiple murder (**not used**)
 - (4) Hijacking (**not used**)
 - (5) Contract murder (**not used**)
 - (6) Felony murder (**not used**)
 - (7) Under 12 (**not used**)
 - (8) Murder of witness (**not used**)
 - (9) Murder during drug offense (**not used**)
 - (10) Murder by an inmate while committing a felony (**not used**)
 - (11) Cold & calculated (**not used**)
 - (12) Medical personnel (**not used**)
 - (13) Murder ordered by drug kingpin (**not used**)
 - (14) Murder by torture (**not used**)
 - (15) Drive by murder (**not used**)
 - (16) Over 60 (**not used**)
 - (17) Disabled person (**not used**)
 - (18) Community policing volunteer (**not used**)
 - (19) Order of protection (**not used**)
 - (20) Teacher (**not used**)
 - (21) Terrorism (**not used**)
- (c) Other factors (non Illinois) (**not used**)
- (d) Related principles
 - (1) Accountability (**not used**)
 - (2) Intent (**not used**)
- (e) Sufficiency of the evidence (**not used**)

§14-4 Statutory mitigating factors

- (a) Generally (**not used**)
- (b) Illinois Statute
 - (1) No prior record (**not used**)
 - (2) Extreme mental or emotional disturbance (**not used**)
 - (3) Victim consent or participation (**not used**)
 - (4) Compulsion (**not used**)
 - (5) Defendant not present (**not used**)
- (c) Other factors (non Illinois) (**not used**)

§14-5 Death Penalty Procedures

- (a) Prosecutorial discretion (**not used**)
- (b) Guilty Plea admonishments (**not used**)
- (c) Jury involvement
 - (1) Generally (**not used**)
 - (2) Waiver of sentencing jury (**not used**)
 - (3) Cause for new jury (**not used**)
 - (4) Voir Dire Generally (**not used**)
 - (5) Witherspoon/Morgan (**not used**)
 - (6) Instructions (**not used**)
 - (a) Generally (**not used**)
 - (b) LWOP (**not used**)
 - (7) Deliberations (**not used**)
 - (8) Communication with jury (**not used**)
 - (9) Effect of Decision by Jury (**not used**)
- (d) Judge's Findings
 - (1) Generally (**not used**)
 - (2) Adequacy (**not used**)
- (e) Miscellaneous Procedures
 - (1) Continuance for sentencing (**not used**)
 - (2) Discovery Generally (**not used**)
 - (3) Depositions (**not used**)
 - (4) Presentence Report (**not used**)
 - (5) Right to Counsel and Self Representation (**not used**)
 - (6) Right to Experts (**not used**)
 - (7) Right of Allocution (**not used**)
 - (8) Right to silence (**not used**)
 - (9) Right to Bifurcated hearing (**not used**)
 - (10) International law (**not used**)
 - (11) Rights at Sentencing Hearing (**not used**)
 - (a) Physical Restraints (**not used**)

§14-6 Eligibility Phase

- (a) Argument
 - (1) Generally (**not used**)
 - (2) Comments found Improper (**not used**)
 - (3) Comments found Proper (**not used**)
 - (4) Waiver and Plain error (**not used**)
- (b) Evidence

- (1) Generally (**not used**)
- (2) Evidence found Improper (**not used**)
- (3) Evidence found Proper (**not used**)
- (4) Waiver and Plain error (**not used**)
- (c) Burden of Proof (**not used**)

§14-7 Aggravation and Mitigation Phase

(a) Argument

- (1) Generally (**not used**)
- (2) Comments found Improper (**not used**)
- (3) Comments found Proper (**not used**)
- (4) Waiver and Plain error (**not used**)

(b) Evidence Generally

- (1) Standard for Admission of Evidence (**not used**)
- (2) Opinion about the Death Penalty (**not used**)

(c) Evidence in Aggravation

- (1) Statements by Defendant
 - (a) Generally (**not used**)
 - (b) Statements to Psychiatrists (**not used**)
 - (c) Unlawfully obtained statements (**not used**)
 - (d) Evidence of Defendant's silence (**not used**)
- (2) Statements by Co-defendants (**not used**)
- (3) Evidence of other crimes or misconduct
 - (a) Proven by hearsay (**not used**)
 - (b) Generally (**not used**)
 - (c) Details of other crimes (**not used**)
- (4) Possibility of parole/future dangerousness (**not used**)
- (5) Psychiatric testimony (**not used**)
- (6) Victim impact testimony
 - (a) Due process limits (**not used**)
 - (b) Opinion about penalty (**not used**)
 - (c) Characterization of crime or defendant (**not used**)
- (7) Lack of remorse/demeanor (**not used**)
- (8) Miscellaneous Aggravation (**not used**)

(d) Evidence in Mitigation

- (1) Statement by defendant (**not used**)
- (2) Statement by co-defendant (**not used**)
- (3) Remorse (**not used**)
- (4) Defendant's character
 - (a) Lack of prior criminal history (**not used**)
 - (b) Rehabilitation potential (**not used**)
 - (c) Conduct in jail or prison (**not used**)
- (5) Circumstances of the offense (**not used**)
- (6) Mental Retardation (**not used**)
- (7) Mental Illness (**not used**)
- (8) Organic brain disorder (**not used**)
- (9) Lingering doubt (**not used**)
- (10) Miscellaneous mitigation (**not used**)

(e) Procedure

- (1) Right to open and close and rebuttal (not used)**
- (2) Burden of proof (not used)**
- (3) Weighing of factors (not used)**
- (4) Defendant's waiver of mitigation (not used)**
- (5) Verdicts (not used)**

§14-8 Review of Death Case

- (a) Duty of Court in Capital case (not used)**
- (b) Mandatory review (not used)**
- (c) Review of counsel's performance**
 - (1) Counsel ineffective (not used)**
 - (2) Counsel not ineffective (not used)**
- (d) Review of guilty plea (not used)**
- (e) Review of sentence**
 - (1) Effect of improper factors (not used)**
 - (2) Reweighing on appeal (not used)**
 - (3) Excessive Sentence (not used)**
 - (4) Disparate Sentence (not used)**
 - (5) Fundamentally Unjust Death Sentence (not used)**
 - (6) Standard of review (not used)**
- (f) Harmless error, plain error (not used)**
- (g) Proceedings on remand (not used)**

§14-9 Stays of execution (not used)

§14-10 Fitness to be executed (not used)

§14-11 Method of Execution (not used)

§14-1 Death Penalty Statute

(a) Generally

People v. Adkins, 239 Ill.2d 1, 940 N.E.2d 11 (2010)

The Sixth Amendment right to confrontation does not apply at the second phase of a capital sentencing hearing, where hearsay evidence may be admitted so long as it is relevant and reliable.

Applying this standard, it was proper for the court to admit a videotaped statement of defendant's girlfriend recounting her knowledge of events leading up to and following the charged offenses, and the affidavit of an Arkansas state police officer recounting his investigation of defendant for a burglary, theft and arson that led to defendant's conviction for those offenses. The mere fact that defendant's confession implicated his girlfriend in the charged offenses did not call into question the reliability of his girlfriend's statement where she was not charged with those offenses, did not confess to her participation of the offenses, and no other evidence implicated her in those offenses.

(Defendant was represented by Assistant Defender Allen Andrews, Supreme Court Unit.)

People v. Banks, 237 Ill.2d 154, 934 N.E.2d 435 (2010)

In a modified opinion, the Supreme Court amplified its discussion rejecting the argument that the instructions at the death penalty hearing incorrectly advised the jury that it must consider mitigating factors individually rather than in the aggregate. The court found that considering the instructions in their entirety, and in light of defense counsel's argument concerning mitigation, there was no reasonable likelihood that the jurors misunderstood their role.

(Defendant was represented by Assistant Defender Allen Andrews, Supreme Court Unit.)

People v. Hanson, 238 Ill.2d 74, 939 N.E.2d 238 (2010)

The Supreme Court affirmed defendant's convictions and death sentence:

1. Consideration of an invalid death sentencing factor at the second stage of a death hearing renders the sentence unconstitutional only if it adds an improper element to the aggravation side of the weighing process. Where a proper aggravating factor allows the sentencer to consider the facts which underlie the improper factor, the death sentence need not be reversed.

Assuming that the evidence of aggravating kidnapping was insufficient to satisfy the reasonable doubt standard, the entire sequence of events, including the acts which possibly constituted aggravating kidnapping, could have been considered under the Illinois "catch all" death penalty provision (720 ILCS 5/9-1(c)).¹ Thus, the jury could have considered the evidence of aggravated kidnapping under a proper aggravating factor.

2. At the mitigating stage of the death hearing, the defendant presented testimony from a former prison warden concerning the actions that would be taken against an inmate who acts violently against a DOC employee. The purpose of the questioning was to show that

¹Section 9-1(c) allows the sentencer to consider aggravating factors that are not specifically listed in the statute.

defendant would not be a danger to prison employees if sentenced to imprisonment.

The State responded by asking the witness about specific instances of inmate violence against correctional officers. The court concluded that the State's action did not constitute clear and obvious error so as to trigger the plain error rule.

The court acknowledged that it would be improper to speculate that defendant might commit additional crimes if given a non-death sentence. The State did not engage in such speculation, however. Defendant did not attempt to show that he would not be prone to violence; instead, he asserted that general DOC regulations were sufficient to deter violence by inmates. The State was entitled to rebut that claim by showing that the general regulations had not stopped all violence against staff members.

3. Defendant filed a motion to declare the death penalty unconstitutional on the ground that the Illinois statute fails to sufficiently narrow the class of persons eligible for death. The court concluded that the trial judge did not err by denying defendant's discovery request to subpoena records in prosecutors' and public defender offices, in order to conduct a statewide review of death penalty cases.

The court rejected defendant's argument that **People v. Ballard**, 206 Ill.2d 151, 794 N.E.2d 788 (2002) authorizes such discovery. Instead, **Ballard** held only that a defendant who makes an empirical claim concerning the constitutionality of the death penalty must provide support for that claim.

The court noted that the discovery request would cover not only death penalty cases, but non-death murder cases as well. In addition, under the defense theory every capital defendant would be entitled to the same remedy. "This is not a proper use of the court's subpoena power."

(Defendant was represented by Assistant Defender Steve Clark, Supreme Court Unit.)

People v. Nelson, 235 Ill.2d 386, ___ N.E.2d ___ (2009) (No. 105340, 12/17/09)

1. Where the State grants a defendant the right to have a jury determine punishment, the defendant acquires a due process interest in having the jury decide his sentence. The trial court has discretion to discharge a juror after deliberations have begun, however, where such action is appropriate. The court noted that in death penalty cases it gives the trial court's determinations some deference, but that deference is less than in a noncapital situation.

2. The trial judge erred by dismissing a juror during deliberations at the death penalty stage of the proceedings. Although the jury foreperson and another juror claimed that Juror 20 had decided at the end of the guilt phase that he would not vote for a death sentence and had refused to consider evidence at the second stage of the sentencing hearing, when questioned by the court Juror 20 gave appropriate answers – that he had no preconceived notions concerning the death penalty and that he kept an open mind although he felt that a death sentence was not warranted. The court also noted that the foreperson, who claimed that Juror 20 refused to deliberate, made statements suggesting that Juror 20 "did in fact deliberate, but that the other jurors felt his reasons for not voting for the death penalty were not adequate."

The court also noted that the other two jurors complained about Juror 20 only after the second stage of deliberations had gone on for a considerable time, the jury had taken at least two votes, and some jurors refused to sign a verdict stating that the jury could not reach a unanimous verdict. Because the jury instructions required the jurors to sign the non-unanimous form if they were not unanimous for death, the jury failed to follow their instructions before questions about Juror 20 arose.

The court concluded:

Where one vote is the difference between a sentence of death and a sentence of imprisonment, the dismissal of that one juror under the circumstances present here was an abuse of discretion. We also find that defendant was prejudiced by the error where Juror 20 appeared to be the only juror not willing to sign the unanimous verdict finding death to be the appropriate sentence and where the newly reconstituted jury returned a unanimous verdict of death some three hours later.

3. The court stated that the trial court did not err by questioning three jurors after receiving reports that Juror 20 would not deliberate. However, such questioning “must be undertaken with great caution, less jurors get the erroneous impression that the trial court prefer a certain outcome.” Furthermore, the trial judge could have given a **Prim** instruction after learning that the jury was deadlocked and after concluding that Juror 20 was acting in good faith.

If the jurors were unable to reach a unanimous verdict after receiving the **Prim** instruction, they would have been required by the jury instructions to sign the non-unanimous verdict form. If some refused, the court could have specifically instructed them to sign the non-unanimous verdict.

4. Because the jury likely would have rendered a non-unanimous verdict had Juror 20 not been erroneously removed from the jury, it would be improper to remand the cause for a new capital sentencing hearing. Instead, the court remanded the cause with instructions for the trial court to impose a prison sentence.

(Defendant was represented by Assistant Defender Steve Clark, Supreme Court Unit.)

People v. Ramsey, 239 Ill.2d 342, 942 N.E.2d 1168 (2010)

1. Supreme Court Rule 701, which applies to capital cases filed on or after March 1, 2002, requires lead and co-counsel in death penalty case to be members of the Capital Litigation Trial Bar. The court found that the rules were not retroactive to defendant’s case, in which the original indictment was filed in 1996, a retrial was ordered in 2000, and defendant pleaded guilty in 2007.

The court rejected the argument that Rule 701 should apply where substantial proceedings in a capital case occur after March 1, 2002, noting that the rule requires membership in the CLTB to conduct *any* representation of a capital client and that the attorneys in question had been working on the retrial for some 18 months when Rule 701 took effect. Removing existing counsel and substituting new counsel would have caused delay and disruption, and would have deprived the defendant of the assistance of attorneys who were familiar with the facts and witnesses and who had taken extensive actions on defendant’s behalf.

The court rejected arguments that the failure to apply Rule 701 retroactively violated equal protection and due process, noting that the attorneys were experienced and qualified capital litigators and should not be presumed to be incompetent merely because they were not members of the Capital Litigation Trial Bar. Finally, the court rejected the argument that imposition of a death sentence was fundamentally unjust, noting that defendant received experienced, capable and competent representation.

2. The court rejected defendant’s argument that the State’s Attorney arbitrarily requested a death sentence. While defendant’s case was awaiting retrial, a predecessor State’s Attorney offered not to seek a death sentence if defendant agreed to plead guilty and accept a sentence of life without parole. The defendant did not accept the offer, but five years later

pleaded guilty when a different State's Attorney was in office and without any agreement concerning sentencing.

On appeal, defendant argued that the decision to seek a death sentence was arbitrary in light of the previous offer to not do so. The court found that no plain error occurred, noting that defendant did not accept the offer when it was made and continued to prepare for trial for five years. Because no bargain was reached, defendant could not have reasonably believed that the offer was still open, particularly when he acknowledged at the time of the plea that he could be sentenced to death.

The court concluded:

A contrary holding would allow the defendant to seek a plea offer from the State, reject it, and pursue a trial, forcing the State to spend the time and money to prosecute the case. Then, at the last possible moment, perhaps facing a conviction, the defendant could force the State to adhere to its side of the "bargain."

Defendant's conviction for murder and death sentence was affirmed.

(Defendant was represented by Assistant Defender Charles Hoffman, Supreme Court Unit.)

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